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BEFORE THE ARIZONA CORPORATION COMMISSION

Bob Stump, Chairman
 Gary Pierce, Commissioner
 Brenda Burns, Commissioner
 Bob Burns, Commissioner
 Susan Bitter Smith, Commissioner

Arizona Corporation Commission

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CORP COMMISSION
DOCKET CONTROL

PROPOSED RULEMAKING TO MODIFY
 THE RENEWABLE ENERGY STANDARD
 RULES IN ACCORDANCE WITH ACC
 DECISION NO. 74365.

Docket No. RE-00000C-14-0112

ORIGINAL

COMMENTS OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION ON STAFF'S PROPOSED
 RENEWABLE ENERGY STANDARD RULES MODIFICATIONS

Overview

The Solar Energy Industries Association (SEIA)¹ appreciates the opportunity to submit these comments in response to Staff's Notice of Compliance Filing dated April 4, 2014. SEIA was an intervener and active participant in the Track and Record Proceeding² that led to the creation of this docket and Proposed Rulemaking. In the Track and Record Proceeding, SEIA supported the adoption of the Recommended Opinion and Order (ROO). This ROO suggested the use of waivers to achieve utility compliance with the Distributed Renewable Energy (DE) Requirement of the Renewable Energy Standard (RES) absent incentives (i.e. Staff's Alternative Track and Monitor proposal).

SEIA continues to believe that the existing RES rules provide sufficient ability for utilities to meet compliance through applications for waivers. However, we are cognizant of the Commission's desire to provide more specificity and permanence than the generic waiver provision offers, and that doing so could involve a rule change. Thus, we believe this proceeding could be a useful forum to provide the additional certainty the Commission is seeking, whether or not a rule change is ultimately adopted. As requested by Staff, we provide these comments on several of the concepts put forward in Staff's filing, as well as an alternative supported by SEIA. Our comments are structured as follows:

1. Staff's Policy Goals as criteria for evaluation
2. Comments on Staff's Proposed Concepts
3. SEIA's Proposed Alternative,
4. Specific RES rule changes needed to accommodate SEIA's Proposed Alternative and address the Commission's concerns,
5. Why SEIA's Proposed Alternative meets Staff's Policy Goals.

1. Staff's Policy Goals as criteria for evaluation

¹ The comments contained in this filing represent the position of SEIA and ARISEIA as organizations, but not necessarily the views of any particular member with respect to any issue.

² Docket Nos. E-01345A-12-0290, E-01933A-12-0296, E-04204A-12-0297

1 We believe any rule change or new policy enacted by the Commission in this proceeding should adhere to
2 the Commission Staff's five original policy goals, which were also supported in the ROO. SEIA believes
3 these goals continue to provide a useful framework for evaluating the various proposals before the
4 Commission. The five policy goals are:

- 5 1) Provide a clear and easily documented way for utilities to achieve compliance under the REST rules;
- 6 2) Recognize reality regarding how much renewable energy generation is occurring in a utility's service
7 territory and what fraction has been procured by utilities;³
- 8 3) Minimize the cost to ratepayers;
- 9 4) Maximize value to the extent possible for those who undertake DG installations and Arizona as a
10 whole;⁴
- 11 5) Be minimally invasive to the REST rules.⁵

12 SEIA believes that many of the Concepts put forward by Staff fall short of meeting Staff's policy goals for
13 reasons as follows.

14 2. Comments on Staff Proposed Concepts

15 a) *SEIA opposes Staff Concepts I, III, and V since they do not uphold Staff's Policy Goals*

16 Concepts I, III, and V each violate Goal 4 ("Maximize value to the extent possible for those who undertake
17 DG installations and Arizona as a whole") because they diminish the value of RECs produced by customers
18 electing to undertake DE installations in Arizona. If the Commission pursues any of these options they would
19 be restricting the freedom – whether intentionally or not -- that Arizona utility customers currently enjoy to
20 pursue distributed REC generation in Arizona. This could stifle investment in Arizona by entities choosing to
21 procure incremental renewable energy beyond what Arizona utilities currently provide. This pertains both to
22 customers pursuing RECs for economic value and those seeking RECs for non-RES obligations (e.g.
23 Walmart's corporate renewable energy goals; Department of Defense's renewable energy requirements).

24 Concepts I, III, and V also involve fundamental changes to the REST rules that may violate Goal 5 ("Be
25 minimally invasive to the REST rules"). For example, Concepts I and V change the underlying responsibility
26 of the utilities to take actions to achieve the RES. Under the current RES rules, an obligation is placed upon
Affected Utilities, rather than all participants in Arizona's power sector. These two options would instead
allow Affected Utilities to meet these obligations as a result of actions they cannot claim responsibility for
(i.e. unincentivized DE investment). To the extent that this occurs, utilities become "free riders" on the
independent activities of DE customers.

Meanwhile, Concept III, contemplates a substantial revision to the RES rules and would not be minimally
invasive. Moreover, this option may eliminate the DE carve-out – a substantial rule change which was not
supported by most parties to the Track and Record Proceeding, or the ROO.

³ SEIA has reworded this goal to reflect what we think is a clearer and more appropriate description. The
original goal set forth by Staff suggested tracking of electric load served by renewable energy, which could be
interpreted as a claim on the renewable energy that would prevent REC certification.

⁴ SEIA understands this to include the avoidance of REC devaluation via double counting.

⁵ SEIA understands this to include the following: a) Retain the DE Carve Out; b) Avoid reduction in overall REST
requirement.

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b) SEIA is generally supportive of Staff Concept II

SEIA is generally supportive of Concepts II, and believes that elements of this proposal could be modified to uphold all of Staff's Policy Goals. We describe this concept in more detail in the subsequent section ("SEIA's Proposed Alternative").

To date, the debate on Track and Record has been premised on the notion that there is a fundamental tradeoff between preserving the full RES (i.e. Goal 5) and preserving REC's (i.e. Goal 4). Moreover, either choice would violate one of Staff's policy goals. SEIA contends that this tradeoff need not exist if Concept II is adopted, whereby utilities would be required to procure REC's to meet the RES as they have in the past. SEIA further contends that this is possible without increased costs to customers, thereby upholding Goal 3 ("Minimize the cost to ratepayers"). We are mindful that some parties have argued that this option would increase ratepayers costs. However, we explain why this is not the case in the subsequent section of these comments.

With respect to the DE Requirement, SEIA supports the notion expressed in the ROO that a waiver of the requirement may be necessary and in the public interest. We believe that Concept VII alludes to a process whereby the Commission could establish such a waiver by tracking and reporting DE market activity. However, as written, this option only offers a partial solution since specific DE waiver criteria are not specified. More importantly, SEIA cautions that Concept VII may not sufficiently safeguard against the double counting of REC's if the Commission decides to allow unincentivized DE to count towards utility compliance.

3. SEIA's Proposed Alternative

a) The commission should adopt the Recommended Opinion and Order (ROO) from the Track and Record Proceeding

While not explicitly included as one of the seven newly introduced concepts, Staff's Notice acknowledges that the ROO from the Track and Record Proceeding is still an option available to the Commission to resolve current REST compliance issues. SEIA continues to support the ROO for the following reasons:

- The ROO is based on proper regulatory process and a substantial record. It is appropriate for the Commission to make its decision based on the evidence in this record (in accordance with A.A.C. R14-3-110).
- The ROO is based on the policy goals set forth by Staff in the Track and Record Proceeding and reiterated above.
- The ROO can be achieved with zero to minimal changes to the REST rules.
- The process for establishing a waiver of the DE carve-out, as suggested by the ROO, can be made more certain by adopting the criteria described below.

b) In response to Commission's concerns expressed in Open Meeting, the following steps should be followed for establishing a waiver of the DE Requirement.

The ROO called for an annual waiver based on the public interest. However, it did not provide details on how this waiver would be implemented. While the parties generally agreed with the principles of the ROO and adopting a waiver, the lack of detail on the waiver proved problematic enough to prevent the Commission from approving it. Drawing from Staff Concept VII, SEIA provides more specific details on how such a waiver should be determined. In general, the Commission would look at the state of the DE

1 market and determine if it is strong enough to warrant a waiver. We believe that these steps provide the
2 certainty necessary for the Commission to move forward with adopting the ROO.

3 • *Step 1: DE Tracking*

4 In its initial filing, Staff posed the following question:

5 “A fundamental question which Staff believes needs to be answered at the outset is what is
6 the information the Commission wants to track regarding Distributed Renewable Generation
7 (“DG”)/Distributed Renewable Energy (“DE”), i.e., 1) all information regarding DG/DE
8 activity in the utilities’ service territory regardless of whether the utility owns it or not; or 2)
9 only information concerning the DG/DE that the utility owns or has purchased.”

10 SEIA believes that both sets of information could be tracked since they are not mutually exclusive. This will
11 give the Commission information on both how the DE market is performing and what portion of that market
12 is attributable to Affected Utilities. However, to avoid risk of double counting, we recommend that the
13 amount DE installed capacity should be tracked instead. This would provide an alternative indicator of the
14 state of the DE market and can serve as the basis for a waiver of the DE Requirement. SEIA suggests that
15 this information be reported on a quarterly basis in conjunction with reports pursuant to Decision No. 74202.

16 • *Step 2: Utility Waiver Application*

17 At the end of any year in which the capacity of DE installations (MW) as a percentage of the utility’s retail
18 peak demand (MW) exceeds the percentage from the prior year a utility may apply for a waiver of the DE
19 requirement for the following year.⁶ The Commission shall consider an application of this nature to be for
20 good cause and may determine that a waiver is in the public interest.

21 • *Step 3: Waiver Review and Revocation*

22 If a quarterly report reveals that DE installations (MW) are likely to fall below the fraction of peak demand
23 from the prior year, during a year in which a waiver has been granted, the Commission has the authority to
24 revoke the waiver. Upon revoking the waiver, the utility may apply for a modification of its REST for the
25 purposes of achieving compliance.

26 ***c) If a waiver of the DE Requirement is granted, the Commission should permit utilities to meet their
full RES obligations with non-DE RECs.***

Under SEIA’s proposal, there would be no change to the overall RES compliance obligations that are in
effect today (thereby preserving the overall 15% RES). Meanwhile, an affected utility would not be credited
for any DE production in its service territory for which it has not procured RECs (thereby preserving the
value of RECs for DE customers). Thus, if a DE waiver is granted, the utility is still required to procure
RECs (of any kind) to meet overall REST requirements for that year.⁷ This is similar to Staff Concept II,
which requires procurement of “least cost RECs” to meet RES requirements. However SEIA clarifies that
procurement of least cost RECs can and should include the use of RECs either generated or banked from
existing utility-owned generation, which would create no incremental costs to customers. In the Track and

⁶ SEIA notes that the current RES rules already allow Affected Utilities to apply for a waiver of any provision
of the RES at any time.

⁷ This does not constitute a *de facto* increase in the RES since affected utilities are still obligated to procure the
same amount of renewable energy as they were previously. The only difference is the source of the renewable energy
being counted towards compliance.

Record Proceeding, the general approach of using utility-scale RECs to meet full RES compliance was referred to as “backfilling” and a debate emerged over whether this might lead to an increase in costs to ratepayers. We anticipate that a similar criticism might be made of this proposal. However, based on our analysis of the major utilities’ present and future RES compliance needs, we don’t believe such criticisms are grounded in reality. For example, based on information from the most recent RES Compliance Filings, RES Implementation Plans, and Integrated Resource Plans (IRP), APS can meet its full RES compliance obligations without purchasing RECs or build incremental renewable energy until 2027 (see Figure 1). Similarly, TEP will not need to purchase RECs or build incremental renewable energy until 2023 while still meeting RES compliance (see Figure 2). In both cases it is assumed that the waived DE requirement would be backfilled with utility-scale RECs.

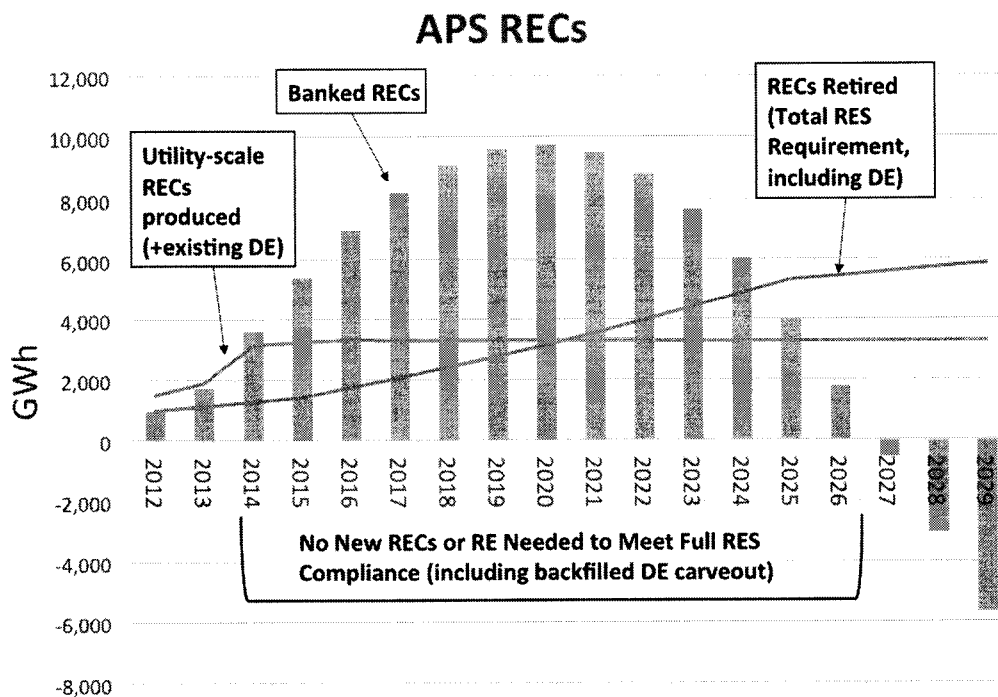


Figure 1. APS' Renewable Energy Credit balance through 2029 based on existing and approved resources. Data for recent REC carrying balances were derived from RES Compliance Reports, data for future renewable energy production were derived from APS' 2014 RES Implementation Plan, and data for future load forecasts were derived from APS' 2014

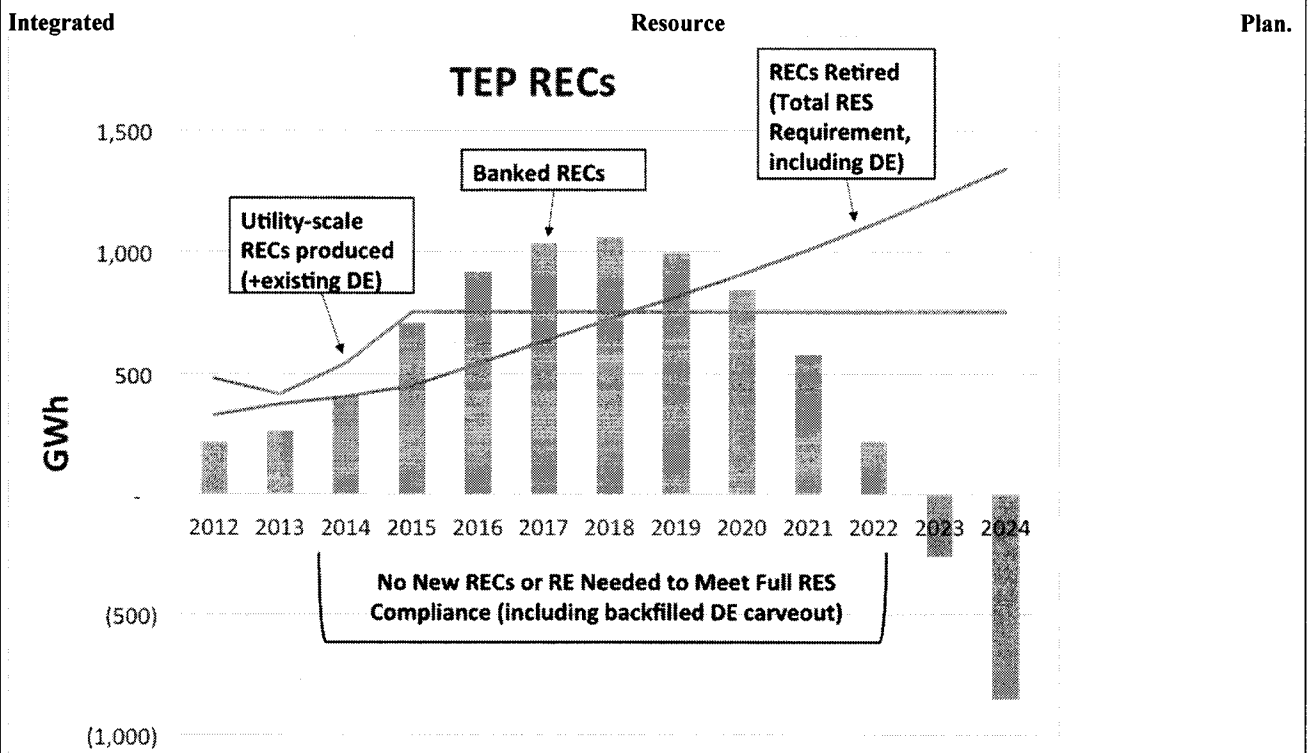


Figure 2. TEP's Renewable Energy Credit balance through 2024 based on existing and approved resources. Data for recent REC carrying balances were derived from RES Compliance Reports, data for future renewable energy production were derived from TEP's 2014 RES Implementation Plan, and data for future load forecasts were derived from TEP's 2014 Integrated Resource Plan.

SEIA contends that the dates for additional REC needs are so distant that any conclusions about the impact of backfilling on ratepayer costs are speculative at best. We admit that at some point several years in the future (e.g. 2027 for APS), a shortage of non-DE RECs available for backfilling could emerge. However, this possibility is too uncertain to serve as the basis for a policy decision on the RES rules. Moreover, each utility's IRPs demonstrate plans to procure incremental RE within the timeframe identified above, which would further reduce the need for additional REC procurement. It's also possible that reductions in RE costs over the next 10 years could enable RE procurement (and associated RECs) to come at a much lower cost than other resources. Thus we conclude that backfilling with utility-scale RECs should not be dismissed on the grounds that it will necessarily increase costs to ratepayers.

d) Alternative Proposal: REC Transaction or Swap

SEIA believes that its Proposed Solution preserves the fundamental integrity of the renewable energy being claimed since any new DE facility would yield renewable energy generation that is over and above the 15% REST Requirement.

However, if the proposal put forth does not appear to be implementable, and still poses a risk to REC certification, SEIA may also be supportive of a different alternative whereby customers with DE transact with the Affected Utility for the RECs. One cost-effective way to implement this proposal would be to swap RECs with the Affected Utility. Thus the utility would obtain the customer's DE RECs, in exchange for an equivalent amount of generic RECs from another source (either utility-scale or DE). Any REC swaps would

1 need to occur on a 1:1 basis and could be included as a provision of the interconnection agreement. This
2 solution depends on the utility's ability to procure a sufficient supply of RECs for swapping. As
3 demonstrated, the anticipated surplus of utility-scale RECs either banked or generated by the major utilities
4 should enable this transaction to occur at no incremental cost to customers.

5 **4. RES rule changes needed to accommodate SEIA's Proposed Alternative and address the**
6 **Commission's concerns.**

7 ***a) No RES rule changes are necessary to accommodate SEIA's Proposed Alternative***

8 Under A.A.C R14-2-1816, the current REST rules already enable the waiver criteria outlined above. While
9 we appreciate the desire to establish more permanency, we don't believe such changes to the rules are
10 necessary at this time. The current waiver provision provides sufficient flexibility for the Commission to act
11 as needed to match each utility's evolving compliance needs. Moreover, the Commission has limited ability
12 to bind the decisions of any future Commissions on any substantive matter including both granting waivers
13 and subsequent rulemakings. However, if the Commission decides it is necessary to invoke a rule change, we
14 suggest making only the very limited changes described below.

15 ***b) If rule changes are deemed necessary, SEIA suggests very limited changes described below.***

16 SEIA could support a rule change that is drawn from Staff Concepts II and the ROO. The first change would
17 be to establish tracking of DE. To do so, the RES rules on Compliance Reports could be modified to include
18 the following:

19 *In its reporting to the Commission the Utility would report all DE capacity installed in its service*
20 *territory and distinguish between those for which it received the RECs and those for which it did not*
21 *receive RECs.*

22 Furthermore, the criteria for establishing a waiver could be included through the following addition
23 (underlined):

24 **R14-2-1816. Waiver from the Provisions of this Article**

- 25 A. The Commission may waive compliance with any provision of this Article for good cause.
26 B. Any Affected Utility may petition the Commission to waive its compliance with any provision of
this Article for good cause.
C. A petition filed pursuant to these rules shall have priority over other matters filed at the Commission.
D. *Good cause for a waiver of the Distributed Renewable Energy Requirement may include a total*
number of Distributed Renewable Energy installations (MW), as a fraction of retail peak load (MW),
within a utility's service territory that is greater than the fraction from the prior year.
E. *Any waiver granted under this Article shall be time limited to a single calendar year and must be*
extended on good cause by subsequent request.
F. *Any waiver granted under this Article shall pertain solely to the requirements within a single*
calendar year and shall not increase or carry over additional compliance obligations to any future
years.
G. *Any waiver granted under this Article may be revoked by the Commission at any time during the*
year in which the waiver was granted.

5. **How SEIA's approach meets Staff's policy goals**

1 The ROO with the waiver criteria recommended herein should be adopted because this approach achieves all
2 of the policy goals set forth by Staff and agreed upon by the parties in the Track and Record Proceeding.

3 *a) SEIA's proposal provides a clear and easily documented way for utilities to achieve compliance*
4 *under the REST rules (Goal 1).*

5 By providing path to apply for and receive a waiver of the DE Requirement, SEIA's Proposed Alternative
6 allows the utilities to be relieved of compliance requirements in high installation years, while maintaining the
7 DE Requirement as a safeguard.

8 *b) SEIA's proposal recognizes reality regarding how renewable energy generation is occurring in a*
9 *utility's service territory and what fraction has been procured by utilities (Goal 2).*

10 Step 1 of SEIA's proposed waiver process would create a separate metric to track the health of the DE
11 market that avoids double counting while ensuring that DE policy goals are being met.

12 *c) SEIA's proposal minimizes costs to ratepayers (Goal 3).*

13 SEIA's proposal minimizes costs to all ratepayers by creating no additional REC needs beyond the current
14 supply for the foreseeable future. Furthermore, it avoids over-incentivizing the DE market by waiving utility
15 DE requirements during high installation years.

16 *d) SEIA's proposal upholds the competing goals of preserving the value of DG RECs (Goal 4) while*
17 *maintaining the RES (Goal 5).*

18 By maintaining the requirement for utilities to procure RECs equal to the full RES, SEIA's Proposed
19 Alternative is the only option that simultaneously:

- 20 • Preserves the value of RECs for DG customers by avoiding double-counting, and
- 21 • Avoids lowering the overall RES requirement for affected utilities.

22 This is the only solution that treats DE customers fairly and avoids inevitable controversy that will emerge
23 from actions that reduce the RES.

24 Conclusion

25 In summary, SEIA does not support any of Staff's Concepts as is. However we believe specific elements of
26 Staff Concept II has merit and lend support to SEIA's Proposed Alternative described herein. We realize
there may be certain details of this proposal that need to be modified and we welcome parties' comments on
this topic.

Respectfully submitted this 21st day of April, 2014,



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